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ETHICON, INC.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

DAVID CHUN,

Plaintiff,

V.

ETHICON, INC., JOHNSON & JOHNSON, and Does 1 to 100, inclusive

Defendants

Case No.

**NOTICE OF REMOVAL UNDER 28
U.S.C. § 1441(B) (DIVERSITY) OF
DEFENDANT ETHICON, INC; DEMAND
FOR JURY TRIAL**

Complaint Filed: June 20, 2024
Trial Date: None Set

TO THE CLERK OF THE CENTRAL DISTRICT OF CALIFORNIA:

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendant Ethicon, Inc. (“Ethicon”) removes this action styled *David Chun. v. Ethicon, Inc., Johnson & Johnson, and Does 1 to 100*, Case No. 30-2024-01407981-CU-PL-CJC, from the Superior Court of California, Orange County, Central Justice Center to the United States District Court for the Central District of California.

As explained below, the United States District Court for the Central District of California, Southern Division, has original subject matter jurisdiction of this civil action pursuant to 28 U.S.C. § 1332(a) and 1441 *et seq.* because complete diversity exists between Plaintiff and Defendants and it is facially apparent from the Complaint that the amount in

1 controversy exceeds \$75,000, exclusive of interest and costs.

2 I. THE STATE COURT ACTION

3 1. On or about June 20, 2024, David Chun (“Plaintiff”), a resident and citizen of
 4 the State of California, filed a Complaint in the Superior Court of the State of California,
 5 County of Orange, entitled *David Chun v. Ethicon, Inc., Johnson & Johnson and Does 1*
 6 *to 100*, Case No. 30-2024-01407981-CU-PL-CJC. *See* Complaint (“Compl.”), attached as
 7 Exhibit A to the Declaration of Joshua J. Wes (“Wes Decl.”). The Complaint names two
 8 non-resident defendants – Ethicon and Johnson & Johnson, — and one hundred (100)
 9 fictitious “Doe” defendants. *Id.* at ¶¶1, 5.

10 2. In his Complaint, Plaintiff alleges that he was implanted with Ethicon’s
 11 Prolene Hernia System (“PHS”) on or about December 22, 2022. *Id.* at ¶ Prod. L-1.
 12 Plaintiff contends that the PHS was manufactured, designed, and sold by Ethicon. *Id.* at ¶
 13 Prod. L-4.

14 3. Plaintiff claims the implantation of the PHS has resulted in wage loss, hospital
 15 and medical expenses, general damage and loss of earning capacity. *Id.* at ¶ 11.

16 4. Plaintiff also seeks to recover compensatory damages. *Id.* at ¶ 14(a).

17 5. Based on the foregoing, Plaintiff asserts the following claims against
 18 Defendants: strict liability, negligence, and breach of warranty. *Id.* at ¶¶ Prod. L-4 through
 19 Prod. L-6.

20 II. REMOVAL IS PROPER BECAUSE THIS COURT HAS ORIGINAL 21 SUBJECT MATTER JURISDICTION PURSUANT TO 28 U.S.C. § 1332(A).

22 6. This Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332(a) because
 23 this is a civil action between citizens of different states in which there is complete diversity
 24 and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

25 A. The Amount in Controversy Requirement is Satisfied.

26 7. In cases where, as here, the plaintiff seeks to recover actual damages for
 27 personal injury, California law prohibits the plaintiff from demanding a specific dollar
 28 amount of damages. *See* Cal. C. C. P. § 425.10(b). In such instances, the federal removal

1 statutes permit Ethicon to assert the amount in controversy in the instant Notice of
 2 Removal. *See* 28 U.S.C. § 1446(c)(2)(A)(ii).

3 8. Pursuant to 28 U.S.C. § 1446(c)(2)(B), removal is proper if the court finds, by
 4 a preponderance of the evidence, that the amount in controversy exceeds \$75,000,
 5 exclusive of interest and costs.¹

6 9. When the amount in controversy is not specified in the complaint, the court
 7 may consider the facts alleged in the complaint as well as in the notice of removal. *See*
 8 *Simmons v. PCR Tech.*, 209 F. Supp. 2d 1029, 1031 (N.D. Cal. 2002); *Del Real v.*
 9 *HealthSouth Corp.*, 171 F. Supp. 2d 1041, 1043 (D. Ariz. 2001). The court may also
 10 consider damages awards in factually similar cases. *See Kroske v. U.S. Bank Corp.*, 432
 11 F.3d 976, 980 (9th Cir. 2005).²

12
 13
 14 1 The preponderance of the evidence standard was adopted in the Federal Courts
 15 Jurisdiction and Venue Clarification Act of 2011 (the “Act”), Pub. L. No. 112-63, 125 Stat.
 16 758. According to the House Report accompanying the bill, “circuits have adopted
 17 differing standards governing the burden of showing that the amount in controversy is
 18 satisfied. Thus ‘sum claimed’ and ‘legal certainty’ standards that govern the amount in
 19 controversy requirement when a plaintiff originally files in Federal Court have not
 20 translated well to removal, where the plaintiff often may not have been permitted to assert
 21 in state court a sum claimed or, if asserted, may not be bound by it.” H.R. Rep. No. 112-
 22 10, at 15 (2011). Accordingly, the “defendants do not need to prove to a legal certainty
 23 that the amount in controversy requirement has been met. Rather, defendants may simply
 24 allege or assert that the jurisdictional threshold has been met.” *Id.* at 16; *see also Dart*

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25 Cherokee Basin Operating Co., LLC v. Owens

26 , 135 S. Ct. 547, 553-54 (2014) (explaining
 27 the Act).

28

2 2 In the event a defendant’s amount-in-controversy requirement is questioned, the court
 24 must provide the parties with an opportunity to submit evidence and then decide whether
 25 the preponderance of the evidence shows that the amount in controversy requirement is
 26 met. *See Dart Cherokee*, *Id.* at 554; *Ibarra v. Manheim Invs., Inc.*, 775 F.3d 1193, 1199
 27 (9th Cir. 2015); *accord Smith v. Mylan Inc.*, 761 F.3d 1042, 1044 (9th Cir. 2014)
 28 (explaining that a district court has no authority to remand a removed action *sua sponte*
 based on a purported procedural defect in the notice of removal); *Kelton Arms Condo.*
Owners Ass’n, Inc. v. Homestead Ins. Co., 346 F.3d 1190, 1193 (9th Cir. 2003) (same).

1 10. Here, it is facially apparent from the Complaint that the amount in controversy
 2 exceeds \$75,000, exclusive of interest and costs. *See Singer v. State Farm Mut. Auto. Ins.*
 3 *Co.*, 116 F.3d 373, 377 (9th Cir. 1997). This is an action for personal injuries allegedly
 4 caused by the surgical implantation of a prescription medical device into Plaintiff's body.
 5 Compl. ¶ Prod. L-1. Plaintiff's Complaint asserts three causes of action against Defendants
 6 under theories of strict liability, negligence, and breach of warranty. *Id.* at ¶¶ Prod. L-4
 7 through Prod. L-6.

8 11. Plaintiff alleges that he has incurred compensatory damages, wage loss,
 9 hospital and medical expenses, general damage and loss of earning capacity. *Id.* at ¶¶ 11,
 10 14.

11 12. Courts have held that allegations similar to those made by Plaintiff facially
 12 satisfy the amount in controversy requirement. *See, e.g., Hammarland v. C.R. Bard, Inc.*,
 13 No. 2:15-cv-05506-SVW-JEM, 2015 WL 5826780, at *2 (C.D. Cal. Oct. 2, 2015) (denying
 14 remand in hernia-mesh case and citing other cases “involving severe injuries, especially
 15 those requiring surgery,” where “courts have found it facially apparent from the complaint
 16 that the amount in controversy was satisfied”); *Boudreaux v. Daimler Chrysler Corp.*, No.
 17 Civ. A. 00-2954, 2001 WL 290157, at *3 (E.D. La. Mar. 22, 2001) (holding that “alleged
 18 damages can easily support the requisite monetary basis for federal jurisdiction” where
 19 plaintiff sought compensation for medical expenses, pain and suffering, mental anguish,
 20 and lost wages).

21 13. Recent pharmaceutical products liability suits in California demonstrate that
 22 the amount in controversy requirement is readily met in suits like this one, even when only
 23 compensatory damages are considered. *See Perry v. Luu*, No. S-1500-CV-279123, 2015
 24 WL 13309363 (Cal. Super. Mar. 5, 2015) (entering judgment on jury verdict of \$700,000
 25 in compensatory damages for plaintiff who suffered various injuries, including painful
 26 intercourse, difficulty voiding urine, continued incontinence, scarring, and infection as a
 27 result of her implantation with a vaginal mesh medical device); *Georges v. Novartis*
 28 *Pharmaceuticals Corp.*, No. 2:06-cv-05207-SJO-VBK, 2013 WL 3148695 (C.D. Cal. Apr.

1 24, 2013) (jury verdict of \$2,162,000 in compensatory damages for plaintiff who developed
 2 osteonecrosis of the jaw, requiring multiple jaw surgeries, after taking the defendant's
 3 prescription bisphosphonate drug during cancer recovery). These verdicts, rendered in
 4 products liability cases involving claims and alleged injuries similar to this one,
 5 demonstrate that it is more likely than not that the amount in controversy here exceeds
 6 \$75,000. *See Kroske*, 432 F.3d at 980 (holding that the district court properly considered
 7 damages awards in similar cases to find that the amount in controversy requirement was
 8 satisfied).

9 14. In short, considering the nature of the injuries Plaintiff alleges, it is facially
 10 apparent that the amount-in-controversy requirement of \$75,000, exclusive of interest and
 11 costs, is met.

12 **B. Complete Diversity Exists Between Plaintiffs and All Properly Joined
 13 Defendants.**

14 15. None of the properly named and joined Defendants is a citizen of the same
 state as Plaintiff. Complete diversity therefore exists under 28 U.S.C. § 1332(a).

16 16. Upon information and belief, Plaintiff was a resident citizen of the State of
 California at the time of the filing of his Complaint and at the time of the filing of this
 18 Notice of Removal.

19 17. For purposes of determining its citizenship under 28 U.S.C. § 1332(c)(1),
 20 Ethicon is a citizen of the State of New Jersey because it is incorporated in the State of
 21 New Jersey and has its principal place of business in New Jersey. Wes Decl. ¶ 4.

22 18. For purposes of determining its citizenship under 28 U.S.C. § 1332(c)(1),
 23 Defendant Johnson & Johnson is a citizen of the State of New Jersey because it is
 24 incorporated in the State of New Jersey and has its principal place of business in New
 25 Jersey. Wes Decl. ¶ 3.

26 19. The citizenship(s) of any Doe Defendant(s) are not considered for the
 27 purposes of determining diversity jurisdiction, *see Compl. ¶ 6*, as they are fictitious
 28 defendants. *See 28 U.S.C. § 1441(b)* ("In determining whether a civil action is removable

on the basis of the jurisdiction under section 1332(a) of this title, the citizenship of defendants sued under fictitious names shall be disregarded.”); *Soliman v. Phillip Morris Inc.*, 311 F.3d 966, 971 (9th Cir. 2002) (“The citizenship of fictitious defendants is disregarded for removal purposes and becomes relevant only if and when the plaintiff seeks leave to substitute a named defendant.”). Moreover, Plaintiff has not identified any Doe Defendants “with sufficient particularity to provide a clue as to their actual identity.” See *Sandoval v. Repub. Servs., Inc.*, No. 2:18-cv-01224-ODW(KS), 2018 WL 1989528, at *3 (C.D. Cal. Apr. 24, 2018) (considering the citizenship of a defendant identified only as “Chris Doe,” where the complaint particularly described the defendant’s proper first name, place of employment, and dates of employment); *Collins v. Garfield Beach CVS, LLC*, No. CV 17-3375 FMO (GJS), 2017 WL 2734708, at *2 (C.D. Cal. June 26, 2017) (considering the citizenship of “Defendant Doe 1,” where the complaint identified the specific store where the defendant was employed as a pharmacist and specified a particular date on which she was employed by the named defendant). Accordingly, the citizenship of the fictitious Doe Defendant(s) is not required to be considered for the purposes of determining if complete diversity exists.

III. ETHICON HAS SATISFIED THE OTHER PROCEDURAL AND VENUE REQUIREMENTS FOR REMOVAL.

20. The Superior Court of the State of California, Orange County, Central Justice Center, is located within the Central District of California, Southern Division, *see* 28 U.S.C. § 84(d), and venue for this case is proper in this Court under 28 U.S.C. § 1446(a) because the Central District of California is the “district and division embracing the place where such action is pending.” 28 U.S.C. § 1441(a).

21. Pursuant to 28 U.S.C. § 1446(a), a copy of all process, pleadings, and orders served upon and by Ethicon are attached as Collective Exhibit A to the Declaration of Joshua J. Wes.

1 22. Ethicon will promptly file a copy of this Notice with the Clerk of the Superior
 2 Court for the State of California, Orange County, Central Justice Center, as required by 28
 3 U.S.C. § 1446(d).

4 23. Immediately following the filing of this Notice of Removal, written notice of
 5 the filing of this Notice will be delivered to Plaintiff's counsel, as required by 28 U.S.C. §
 6 1446(d).

7 24. Ethicon was served with the complaint and summons on July 2, 2024

8 25. Removal is timely as this Notice was filed within 30 days of the receipt of the
 9 initial pleadings and summons by Ethicon. *See* 28 U.S.C. § 1446(b)(2)(B).

10 26. Upon information and belief, as of the date of the filing of this Notice of
 11 Removal, Defendant Johnson & Johnson has not been served with a copy of the Complaint
 12 and summons.³ Accordingly, Ethicon does not need its consent to the removal of this
 13 action. *See Aqua Connect, Inc. v. Code Rebel LLC*, No. CV-11-5764 RSWL (MAN), 2011
 14 WL 5075421, at *4 (C.D. Cal. Oct. 25, 2011) (“Case law generally requires all defendants
 15 to join or consent to the notice of removal, but an exception exists when a non-joining
 16 defendant has not been served in state court.”).

17 27. No previous application has been made for the relief requested herein.

18 28. By removing this action to this Court, Ethicon does not waive any defenses,
 19 objections, or motions available under state or federal law. Ethicon expressly reserves the
 20 right to move for dismissal of some or all of Plaintiff's claims pursuant to Rule 12 of the
 21 Federal Rules of Civil Procedure and/or seek dismissal on grounds of lack of personal
 22 jurisdiction, improper venue, or under the doctrine of *forum non conveniens*.

23
 24 3 Although Johnson & Johnson Medical Devices & Diagnostics Group – Latin America,
 25 LLC, which is located in Florida, was served with Plaintiff's Complaint, it is not a named
 26 defendant in this action. It is a separate and distinct entity from Johnson & Johnson.
 27 Further, it does not design, manufacture, or sell the alleged product at issue. Therefore,
 28 Johnson & Johnson Medical Devices & Diagnostics Group – Latin America, LLC, was
 erroneously served with process, is not a proper party to this action, and Ethicon does not
 require its consent to the removal of this action.

1 WHEREFORE, Defendant Ethicon gives notice that the matter bearing the case
2 number 30-2024-01407981-CU-PL-CJC, currently pending in the Superior Court of the
3 State of California, Orange County, Central Justice Center, is removed to this Court
4 pursuant to 28 U.S.C. §§ 1332 and 1441 *et seq.*

5
6 DATED: July 31, 2024

TUCKER ELLIS LLP

7
8 By: /s/ Joshua J. Wes
9 Joshua J. Wes
Attorneys for Defendant
10 ETHICON, INC.
11

DEMAND FOR JURY TRIAL

12 Defendant Ethicon, Inc. hereby demands trial by jury in this action.
13

14 DATED: July 31, 2024

TUCKER ELLIS LLP

15
16 By: /s/ Joshua J. Wes
17 Joshua J. Wes
Attorneys for Defendant
18 ETHICON, INC.
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1 **CERTIFICATE OF SERVICE**

2 This Certificate of Service is made in compliance with Local Rule 5-3.1.2 and
 3 Civ.R. 5(b). I am employed in the County of Los Angeles, State of California. I am over
 4 the age of 18 and not a party to the within action. My business address is 515 South
 5 Flower Street, Forty-Second Floor, Los Angeles, CA 90071.

6 On July 31, 2024, a true and correct copy of the foregoing **NOTICE OF
 7 REMOVAL UNDER 28 U.S.C. § 1441(B) (DIVERSITY) OF DEFENDANT
 8 ETHICON, INC; DEMAND FOR JURY TRIAL** was filed with Court and served
 9 electronically and will be available for viewing and downloading from the Court's
 CM/ECF system.

10 The Notice of Electronic Case Filing automatically generated by the system and
 11 sent to all parties entitled to service under the Federal Rules of Civil Procedure and the
 12 Local Rules of the Central District of California who have consented to electronic service
 13 shall constitute service of the filed document to all such parties. Additionally, all parties
 14 will be served as follows:

15 (X) **VIA U. S. MAIL:** I placed a copy in a separate envelope, with postage fully
 16 prepaid, addressed as follows. By placing for collection and mailing on the below
 17 indicated day following the ordinary business practices at Tucker Ellis LLP. I
 18 certify I am familiar with the ordinary business practices of my place of
 19 employment with regard to collection for mailing with the United States Postal
 20 Service. I am aware that on motion of the party served, service is presumed invalid
 21 if postal cancellation date or postage meter date is more than one day after date of
 22 deposit or mailing affidavit.

23 Gary L. Chambers
 24 Chambers & Noronha
 25 2070 N. Tustin Avenue
 26 Santa Ana, CA 92705
 27 Email: glchambers@cnlegalgroup.com

28 Attorneys for Plaintiff

19 I declare that I am employed in the office of a member of the bar of this Court at
 20 whose direction the service was made. I declare under penalty of perjury under the laws
 21 of the United States of America that the foregoing is true and correct.

22 I declare under penalty of perjury under the laws of the United States that the
 23 foregoing is true and correct.

24 Executed on July 31, 2024, at Los Angeles, California.

25 
 26 _____
 27 Jennifer L. Polzin